

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER KOSTYSHYN,	§
	§ No. 271, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. VN02-07-2469-03
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 5, 2007
Decided: January 16, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 16th day of January 2007, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In February 2003, the defendant-appellant, Peter Kostyshyn, was found guilty by a Superior Court jury of Criminal Trespass, Harassment, Offensive Touching, Assault in the Second Degree, and Falsely Reporting an Incident. In March 2003, Kostyshyn was sentenced to a prison term

followed by probation. This Court affirmed Kostyshyn's convictions and sentences on direct appeal.¹

(2) In May 2006, Kostyshyn's probation officer reported that Kostyshyn was in violation of his probation and recommended imprisonment. At the VOP hearing, the Superior Court discharged his probation as unimproved. This appeal followed.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.²

(4) Kostyshyn's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). Kostyshyn's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Kostyshyn's counsel informed him of the provisions of Rule 26(c) and provided him with a copy of the motion to

¹ *Kostyshyn v. State*, Del. Supr., No. 176, 2003, Steele, J. (Jan. 30, 2004).

² *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

withdraw and the accompanying brief. Kostyshyn also was informed of his right to supplement his counsel's presentation. Kostyshyn has not raised any issues for this Court's consideration. The State has responded to the position taken by Kostyshyn's counsel and has moved to affirm the Superior Court's decision.

(5) This Court has reviewed the record carefully and has concluded that Kostyshyn's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Kostyshyn's counsel has made a conscientious effort to examine the record and the law and has properly determined that Kostyshyn could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/Henry duPont Ridgely
Justice